

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

ART SHY, et al.,

Plaintiffs,

v.

NAVISTAR INTERNATIONAL
CORPORATION, et al.,

Defendants.

Case No. C-3-92-333
Judge Walter Herbert Rice

SUPPLEMENTAL BENEFIT
COMMITTEE OF THE NAVISTAR
INTERNATIONAL TRANSPORTATION
CORP. RETIREE SUPPLEMENTAL
BENEFIT PROGRAM,

Intervenor-Plaintiff,

v.

NAVISTAR INTERNATIONAL
CORPORATION ,

Defendant.

**STATUS REPORT OF INTERVENOR-PLAINTIFF SUPPLEMENTAL BENEFIT
COMMITTEE OF THE NAVISTAR INTERNATIONAL TRANSPORTATION
CORP. RETIREE SUPPLEMENTAL BENEFIT PROGRAM**

Intervenor-Plaintiff Supplemental Benefit Committee of the Navistar International Transportation Corp. Retiree Supplemental Benefit Program (the “Committee”) submits this report to apprise the Court of the current status of this matter.

1. On March 29, 2013, this Court ordered the Committee to file a request detailing the information the Committee required from Navistar International Corporation and its

subsidiaries and affiliates, including Navistar Inc. (collectively referred to as “Navistar” or the “Company”) in order to perform its fiduciary duties under the Navistar International Transportation Corp. Retiree Supplemental Benefit Program (the “Order”). Dkt. 426.

2. On April 19, 2013, the Committee filed its request in compliance with the Order. Dkt. 427.

3. On May 10, 2013, Navistar file its Notice of Compliance with the Order. Dkt. 428. On that day, the Company sent to the Committee a written statement, along with more than 77,000 pages of documents.

4. Since receiving Navistar’s response, the Committee, its counsel, and its expert have undertaken an analysis of the information produced in order to determine whether Navistar has failed to make required contributions to the Supplemental Benefit Program Profit Sharing Plan (the “Plan”). The Committee has reached the tentative conclusion that the Company has, in fact, materially breached the Shy Agreement and failed to act in accordance with the terms of the Plan.

5. For example, Section 5.5 of the Plan limits the inclusion of net income in the profit-sharing calculation from “operating results of businesses acquired after the Effective Date.” However, the Committee has reason to believe that Navistar has shifted operations from the Company as it existed at the time of the Agreement to entities that it later organized, formed, and capitalized, and then claimed that those are “acquired” entities for profit-sharing purposes. Similarly, the profit-sharing calculation treats income from international operations differently from that of domestic operations, and the Committee believes that Navistar has created corporate structures outside the U.S., some of which are merely shell companies, to which it attributes profits even though the profits were, in substance, generated by entities within the U.S.

6. The Committee is in the process of reconstructing the prior profit-sharing calculations to determine whether correcting the breaches would generate payments to the Plan sufficient to justify the expense of litigation. It expects to make a final determination whether to seek additional relief in this Court on or before August 20.

Dated: July 16, 2013

Respectfully submitted,

/s/ Kevin L. Murphy
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CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of July, 2013, a copy of the foregoing was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's CM/ECF and copies will be mailed to those parties to whom electronic notice has not been sent.

/s/ Kevin L. Murphy
Kevin L. Murphy (#0021810)

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